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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 PACIFIC COAST STEEL, *et al.*,

11 Plaintiffs,

12 v.

13 TODD LEE LEANY, *et al.*,

14 Defendants.
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Case No. 2:09-CV-2190-KJD-PAL

ORDER

16 Presently before the Court is Plaintiffs' Omnibus Motion in Limine (#396). Defendant Tamra
17 Mae Hunt filed a response in opposition (#407) to which Plaintiffs replied (#409).

18 I. Analysis

19 Plaintiffs have moved to exclude evidence in eleven areas based on Federal Rules of Evidence
20 401 and 402 (relevance) and 403 (unfair prejudice).

21 1. Nullification and Guaranty Obligations

22 Plaintiffs argue that Hunt may present evidence or make arguments designed to elicit
23 sympathy from the jury that she was "only" a guarantor of, and not a party to, the Asset Purchase
24 Agreement ("APA"). Of course, Hunt may not argue that the jury may disregard Hunt's contractual
25 obligations as a "mere guarantor." However, this does not prevent the parties from accurately
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1 describing the contractual, and other, relationships between the parties. Nor does it prevent Hunt
2 from asserting the defenses she has preserved.

3 2. The Second Codicil is the Operative Contract & 4. The PCS Note

4 The Court has already ruled that the Second Codicil (“the Codicil”) is the operative agreement
5 in this action. Hunt may not argue that the APA and not the Codicil is in operation. Nor may Hunt
6 attack the validity of the Note. However, the Court reminds the parties that the Court did not rule as
7 to the effect of the Codicil. The Court clearly stated that material issues of fact prevented the Court
8 from deciding whether the Second Codicil “altered or only clarified the profitability determination for
9 works in progress.” Order, Docket No. 371, p.6, l. 22-24. Additionally, the Court held that:

10 This ruling will not, however preclude Defendants from asserting
11 their affirmative defenses which include proximate cause and failure
12 to mitigate damages. There remain factual issues such as the
availability of alternative courses of action, and whether Plaintiffs
viewed the Leany conflicts as problem or opportunity.

13 Order, Docket No. 373, n.1. The Court will not withhold evidence that is relevant to these issues.

14 3. Third-partys’ Financial Condition

15 Without specific examples and foundation, or lack thereof, this Court cannot rule on this issue.
16 As it just stated, the Court will not withhold evidence that may be relevant to affirmative defenses and
17 motive for the tort claims. Accordingly, this portion of the motion is denied as moot subject to renewal
18 at trial when such evidence is actually attempted to be introduced.

19 5. Health Issues

20 As the Court previously noted in the hearing on May 20, 2013, the Court will allow evidence of
21 Defendant Hunt’s health if it is relevant to explain an action or course of conduct.

22 6. Evidence of Hunt’s Financial Condition

23 Just as with the issue of the third-partys’ financial condition, without specific examples and
24 foundation, or lack thereof, this Court cannot rule on this issue. As it has stated, the Court will not
25 withhold evidence that may be relevant to affirmative defenses and motive for the tort claims. The
26 Court will not withhold evidence that is necessary for the jury to understand the relationships and

1 transactions amongst the parties. The various agreements, contracts, codicils and notes are all
 2 interrelated. None occurred in a vacuum and it will be necessary for a jury to see the big picture and
 3 not isolated and unrelated snapshots to determine what was occurring and why. Accordingly, this
 4 portion of the motion is denied as moot subject to renewal at trial when such evidence is actually
 5 attempted to be introduced.

6 7. Evidence of Plaintiffs' and Third Partys' Wealth, Net Worth, Income, Profit Motives,
 7 Economic Motives

8 The Court denies this portion of the motion in limine to the extent that it conflicts with Hunt's
 9 claims for the breach of the covenant of good faith and fair dealing and civil conspiracy. The evidence
 10 may also be relevant to Hunt's claims that Plaintiffs and Third-party Defendants had intent and motive
 11 contrary to or unfaithful to the purpose of the APA.

12 8. Expert Testimony

13 Plaintiffs seek to exclude Defendant Hunt's expert witness, Edward McDonough, CPA,
 14 suggesting that he failed to discuss damages under the effect of the Second Codicil. Clearly,
 15 McDonough's rebuttal report included analysis of the Second Codicil and discussed two alternative
 16 calculations provided by Plaintiff's expert. Accordingly, the motion to exclude Hunt's expert is denied.

17 9. Evidence of Third-party Defendants' Personal Life

18 This motion is too vague to resolve. Plaintiffs or Third-party Defendants may renew the motion
 19 upon the introduction of evidence of someone's "personal life."

20 10. Commentary or Evidence on the Absence or Presence of Corporate Representatives or
 21 Third-party Defendants

22 This motion in limine is granted. Defendant may not comment on or introduce evidence of the
 23 absence of any party without prior authorization from the Court.

24 11. Other Claims or Lawsuits

25 Plaintiffs object to evidence of other lawsuits involving Plaintiffs on relevance and hearsay
 26 grounds. To the extent that Hunt can produce admissible evidence, the Court finds that evidence of

1 litigation or allegations of instances where Plaintiffs attempted to avoid paying seller based on holdback
2 provisions in contracts may be relevant evidence of other acts such as “motive, opportunity, intent
3 preparation, plan, knowledge, identity, or absence of mistake or accident.” Fed. R. Ev. 404(b).
4 Further relevance or hearsay objections may be renewed at trial.

5 II. Conclusion

6 Accordingly, IT IS HEREBY ORDERED that Plaintiffs’ Omnibus Motion in Limine (#396) is
7 **GRANTED in part and DENIED in part.**

8 DATED this 30th day of September 2013.

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Kent J. Dawson
United States District Judge
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